



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2005

Mr. Ernesto Rodriguez
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2005-03143

Dear Mr. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 222048.

The El Paso Police Department (the "department") received a request for "any incident or traffic violation reports" related to three named individuals. You state that some responsive information has been released to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy. Information is protected from disclosure by the common-law right to privacy when (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for*

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Freedom of the Press, 489 U.S.749(1989). In this instance, the requestor seeks copies of unspecified information in which three specified individuals are identified. Thus, the request requires the department to compile information relating to these individuals. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates these individuals' right to privacy to the extent that it includes investigations in which they were criminal suspects, arrestees, or defendants. Accordingly, we conclude that to the extent that the department maintains responsive information that reveals that these individuals were criminal suspects, arrestees, or defendants, such information must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy on the basis of *Reporters Committee*. Cf. Gov't Code § 411.082(2) (definition of criminal history record information does not include driving record information).

The common-law right to privacy also encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). We have marked information that the department must withhold under section 552.101 in conjunction with common-law privacy.

You assert that the information submitted in Exhibit E, which relates to an alleged sexual assault, is private and must be withheld under section 552.101. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information that either identifies or tends to identify a victim of sexual assault or other sex-related offenses may be withheld under common-law privacy. The information at issue, however, does not identify or tend to identify the victim of the alleged sexual assault. Therefore, we conclude that this information is not private and the department may not withhold it from disclosure under section 552.101 on that basis.

Section 552.101 also encompasses confidentiality provisions such as Family Code section 51.14. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). You assert that the records submitted as Exhibit B are confidential under section 51.14(d) of the Family Code. We note, however, that section 51.14(d) does not apply where the information in question involves only a juvenile complainant or witness and not a juvenile suspect or offender. See Fam. Code § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by child). The information at issue does not involve a juvenile suspect or offender. Therefore, section 51.14(d) is inapplicable, and the information may not be withheld under section 552.101 of the Government Code on that basis.

We note that the submitted records contain social security numbers. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social

security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

We next note that a portion of the submitted information is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code* § 552.130. Accordingly, we conclude that the department must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code.

In summary, to the extent that the department maintains responsive information that reveals that any of the three specified individuals were criminal suspects, arrestees, or defendants, such information must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy on the basis of *Reporters Committee*. We have marked information that the department must withhold under section 552.101 in conjunction with common-law privacy. Social security numbers may be confidential under federal law. The department must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code. The department must release the remaining submitted information to the requestor.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. *Gov't Code* § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

²As our ruling is dispositive, we do not address your remaining claim.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 222048

Enc. Submitted documents

c: Ramon Ortega, Jr.
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(w/o enclosures)